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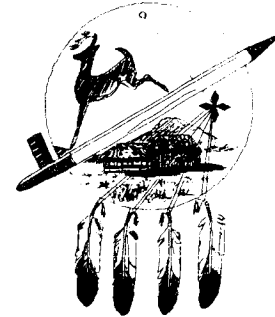
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December 15, 2006

Via Hand-Delivery

Philip Hogen, Chairman
National Indian Gaming Commission
1441 L St., N.W., Suite 9100
Washington, D.C. 20005

Re: Comments on Economic Impact of Proposed Class II Classification Standards (71 Fed. Reg. 30,238 (May 25, 2006)), Proposed Electronic or Electromechanical Facsimile Definition (71 Fed. Reg. 30,232 (May 25, 2006)), Proposed Technical Standards (71 Fed. Reg. 46,336 (August 11, 2006)); and Proposed Alternative for Class II Classification Standards.

Dear Chairman Hogen:

Enclosed please find the comments of the Kickapoo Traditional Tribe of Texas (the "Tribe") on the Economic Impact Analysis of the National Indian Gaming Commission's ("NIGC") proposed Class II Classification Regulations (71 Fed. Reg. 30,238 (May 25, 2006) prepared by Dr. Alan Meister, "The Potential Economic Impact of Proposed Changes to Class II Gaming Regulations," and the report prepared by bmmtestlabs "Comparison Analysis of Various Class II Configuration Options." We also offer additional comments on the NIGC's proposed Electronic or Electromechanical Facsimile Definition (71 Fed. Reg. 30,232 (May 25, 2006)) and proposed Technical Standards (71 Fed. Reg. 46,336 (August 11, 2006)), as well the NIGC's recently proposed alternative Class II classification regulations.

The NIGC's proposed regulations would have a staggering economic impact on Indian country generally, and the Kickapoo Traditional Tribe of Texas in particular. As Dr. Meister's report demonstrates, promulgation of the Classification Standards would cause \$1.483 billion in lost annual revenue for tribes across Indian country. While that figure alone should be sufficient cause for the NIGC to reconsider its proposal, it does not include the whole cost to the industry. Dr. Meister's report does not include the costs associated with the facsimile definition. Nor does the study include the cost of the proposed technical standards, which we understand would be a tremendous amount of

money. While these numbers strongly suggest that the NIGC should reconsider its proposal, at the very least it should conduct economic impact analyses of these other aspects of its proposal before moving forward. We request that you do just this: withdraw the proposed regulations or, if you are not inclined to do so now, to conduct economic impact analyses on the other pieces of the proposal (the technical standards and the change in definition) before considering any further steps to implement the proposed regulations.

The devastating impact of these regulations would fall heavily on the Kickapoo Tribe. The Kickapoo Tribe, like many other tribes, relies on its Class II gaming revenues to fund nearly all of its governmental programs. Any one of the three proposed regulations could result in the Tribe having to shut its doors.

All three proposals would prohibit viable Class II gaming, and while the Tribe has a legal right to Class III gaming, it may be some time until the Tribe can exercise that right. If the proposed regulations were promulgated as proposed and we cannot within three years get to the stage of Class III gaming, the result would be the end of viable gaming for the Tribe. Jobs would be lost, our tribal government would be severely affected as our source of government revenues would be hobbled, and our ability to provide essential services to our members would end.¹ While we recognize that this was surely not the intention of the NIGC in proposing these regulations, that is the reality they present. Our November 15, 2006, comments provide more details on the severe effect the proposed regulations would have on our Tribe. We urge the NIGC to reevaluate its proposals in line with our earlier comments so that such a dramatic, unreasonable and unnecessary result can be avoided.

In doing so, we note that the economic impact analysis prepared by Dr. Meister confirms that the NIGC's proposed regulations do not – as suggested in the preamble to the proposals – meet the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 801 et seq., or the Unfunded Mandates Reform Act, 2. U.S.C. § 1501 et seq. Nor do the proposed rules meet the requirements of Executive Order 12866, Executive Order 12988, and Executive Order 13175. Taken together these statutes and executive orders are designed to ensure that regulatory proposals of the sheer economic magnitude contemplated herein do not improperly impact small governments like tribes, regulated entities or the U.S. economy. The NIGC should reconsider its proposal in light of these requirements.

1. Dr. Meister's Report demonstrates that the NIGC's proposed rules would have a devastating and unprecedented economic impact on Indian country.

The Economic Impact Analysis prepared by Dr. Alan Meister, Ph.D., "The Potential Economic Impact of Proposed Changes to Class II Gaming Regulations," (hereafter, the "Meister Report") demonstrates that the NIGC's proposed Classification

¹ This risk was not lost on Dr. Meister, who recognized that: "Some tribes that rely heavily on Class II machines for tribal government revenue could be severely impaired if facilities are forced to shut down. Essential tribal operations, programs, and services could be in jeopardy of being lost."

Regulations would result in annual losses of \$1.483 billion in revenue across Indian Country. Such staggering losses, even over a single year, would devastate many tribal economies.

The proposal's devastating economic impact is starkly illustrated by the findings in Dr. Meister's report. His report confirms that:

1. The proposal would cost tribes \$1.483 billion in lost revenues per year across Indian country.
2. The proposal would result in Class II systems that are slower, more cumbersome to play, less diverse, and less appealing to patrons and which generate less revenue.
3. No past or current Class II device would qualify as Class II under the proposed regulations.
4. Tribes may have to shut down their facilities; and it is likely that some smaller Indian gaming facilities would have to shut down.

The Meister Report discusses the Kickapoo Tribe in particular and underscores the points we submitted in our November 15, 2006 comments. Specifically, the Meister Report states that the new Class II machines would be less appealing to patrons and generate less gaming revenue than current Class II machines. See Meister Report at 9-11.

The Report further states clearly that in light of our political and legal reality, while we have a right to conduct Class III gaming, "if the NIGC's proposed Class II regulation changes are enacted, the Kickapoo Tribe would have no choice but to replace existing Class II machines with inferior compliant devices." Meister Report at 31. We agree, and firmly believe that in addition to being forced to have inferior devices which will generate less money, the undertaking of switching to such machines would be extraordinarily expensive. This expense is exacerbated because as the Meister Report states, "there are no Class II gaming machines that would meet the requirement or proposed regulations. See Meister Report at 13 and 33. Replacing or modifying all machines currently in operation will require significant costs from a gaming operation, a cost that our modest operation cannot easily cover.

Even as the Meister Report confirms the enormous impact the proposed regulations would have on tribes throughout Indian country and our tribe specifically, it is admittedly conservative,² and does not fully capture the cost of the NIGC proposals. As detailed below, it suffers from conservative assumptions that do not accurately reflect the impact these regulations would have on tribal economies like ours. Accordingly, we respectfully request that the Meister Report be revised along the following lines to more accurately capture the full cost of the proposed rules.

² "...estimated lost gaming revenue is likely to be conservative" because it fails to account for the fact that many facilities might have to shut down altogether. Meister Report at 41.

1. The Meister Report improperly downplays the impact of the regulations by focusing on Scenario 2, which excludes 75 percent (or over 40,000) of all Class II games by excluding states where tribes have a "viable alternative" to Class II gaming. While the tribes in those states may have an alternative to Class II gaming, being presently able to exercise that alternative is a different matter.

Even if those tribes could exercise the alternative, they would still need additional time to transition their gaming floors to do so (See Meister Report at 14). The Meister Report should be revised to focus on Scenario 1 which includes all states, rather than Scenario 2 which does not.

2. Along the same lines, removing Class II machines operated in certain states from the analysis because there is a "viable" Class III alternative ignores the fact that many tribes supplement their Class III operations with Class II. The proposed Class II regulations would reduce Class II revenues regardless of whether there is an alternative to offer Class III games.

Further, Class II is important not only as a supplement to Class III gaming, but also as a negotiating tool for Class III compacting as the Meister Report acknowledges. Meister Report at 48. The proposed regulations would negatively impact both, regardless of whether there is a viable alternative, and the Report should be revised to reflect this.

3. The Meister Report is incorrectly based on the assumption that the proposed regulations would result in the creation and implementation of a MegaMania-type system across Indian country. Its calculation of lost revenues is based on the difference between revenue generated by current Class II systems and the Mega-Mania system. This assumption fails to recognize that the proposed regulations are impossible to meet and call for the creation of a game that is not economically viable, and that the gaming manufacturers have stated that they may not be able to stay in the market to produce any new Class II games if the current regulations are promulgated as they stand. If there are no games built to meet the new standards, there will be no Class II games for tribes to operate and the entire Class II industry could collapse. If that were to occur, lost revenues would be much higher than \$1.483 billion. By Dr. Meister's estimation, "if lost revenue is significant enough to force a gaming facility to shut down, then lost gaming revenue would equal current gaming revenue of that facility. For this reason, estimated lost gaming revenue is likely to be conservative." Meister Report at 41. If the entire Class II industry were to collapse, lost revenues to tribes would be well over \$2.5 billion.

4. Dr. Meister's Report recognizes that many facilities may have to endure temporary closure when changing over to compliant games. Assuming, again, that even if the standards were changed to render the games viable, the study fails to account for the costs associated with temporary closures. The lost revenues calculated by Dr. Meister represent annual losses based on a 57 percent reduction in income caused by playing a Mega-Mania type system rather than currently allowed systems. They do not account for the full cost of the proposed regulations in the first few years of implementation where --

assuming again for arguments' sake that the standards could ever be met – tribes are forced to close up shop to await certification and switch out games. During these periods, tribes would not lose 57 percent of their income, they would lose 100 percent of their income. As a result, even if the standards could be met, tribes would face the potential of a full \$2.5 billion in lost revenue in the first year alone. Granted, the revised proposed classification regulations allow for a 36 month grace period for those of us in the Class III secretarial procedures process. This may or may not be adequate time for us to have moved to a Class III operation. If it is not, we will have to change over to compliant games and most likely will have to temporarily close at that time to make the necessary changes, resulting in a loss of all of our revenue for an indefinite period. Additionally, in a market like the Kickapoo Tribe's where there is competition from non-Indian gaming, there is a risk that we could lose our gaming clients to non-Indian competition. While the Meister Report recognizes this risk (Meister Report at 11), it does not account for the lost revenue that would result.

5. The NIGC has influenced the results of the Meister Report by excluding an undefined class of Class II devices in Scenario 3 that it believes – without explanation – do not qualify as Class II. This Scenario is inconsistent with the IGRA, the NIGC's current regulations, and case law and should not be relied upon by the NIGC.

6. While the Meister Report properly accounts for lost non-gaming revenues that would result from the rules, it does not account for lost non-Indian revenues that would result. Many tribal Class II casino operations have become important economic engines for the local economy. In fact, our Class II operation is one of the top employers in Maverick County, one of the poorest counties in Texas. If the regulations were promulgated as proposed, they would not only destroy the tribal gaming industry, but also result in the loss of jobs for non-Indian employees, as well as many businesses whose economies are dependent upon tribal Class II gaming. The Report does not quantify these costs, and should be revised to do so.

7. The Meister Report only focuses on lost tribal member casino jobs. This fails to recognize that the proposed regulations would result in the loss of a number of tribal government jobs that are dependent on Class II gaming revenue. The Report should be revised to properly account for these additional job losses as well.

8. The Meister Report fails to estimate a number of other likely costs that would have to be borne by tribes as a result of the proposed regulations. While the Report recognizes that tribes would have to bear increased capital costs associated with switching out new Class II systems, regulation, training, revenue sharing and financing, it does not quantify these costs, which could themselves be prohibitive. The Meister Report should be revised to fully capture all of these costs as well.

9. In addition, the Meister Report appears to make assumptions about the data and the conditions in which gaming occurs. For instance, the study does not clearly explain its assumption that customers will exhaust their budgets when playing or why customers would play longer if the games were slower. In this context, we believe that the Meister

Report is ineffective in the accounting of conditions in its qualitative analysis. Moreover, we believe the Meister Report is insufficient because it focuses only on time sequences without regard to playability of the game.

2. The BMM Study Fails to Account for its Methodology and is Limited in Scope

The study conducted by bmmtestlabs is vague in its methodology and does not accurately reflect the true loss of revenue that would result from these games. First, the report does not explain the model used, and it is uncertain whether BMM used a mathematical model, and actual Class II system or some type of simulator. Accordingly, its results are unverifiable. Second, the results only list differences in revenue based on speed of play, and fail to reflect the effect of playability on revenue. In addition to increasing time of play, the proposed regulations require new design criteria like multiple touches and ball releases that will significantly hinder play and make the game much less attractive to patrons. The BMM study fails to recognize the adverse effect on playability caused by the new standards, and instead relies on the incorrect assumption that there is a direct correlation in revenue between current games and the proposed games based solely on time of play. The study should be revised to explicitly note this limitation, and should be relied upon only in light of this limitation.

3. The NIGC Needs to Accurately Assess the Cost of the Proposed Facsimile Definition, the Proposed Technical Standards and the Recently Released Alternative Classification Standards Before Moving Forward.

Neither the Meister Report nor the BMM study account for the cost of the proposed facsimile definition, the proposed technical standards or the recently proposed alternative to the classification standards. Both reports are focused solely on the proposed classification standards without the newly proposed changes. As a result, the NIGC's economic impact analysis of the proposal is incomplete. As we discussed in our prior comments, the facsimile definition could have the same effect as the classification standards and result in banning all economically viable forms of Class II gaming. If that were the case, it would result in losses of over \$2.5 billion in lost revenue alone. Similarly, we understand that because no game currently meets the requirements of the proposed technical standards, they would cost an additional \$1 - \$2 billion to implement. Prior to moving forward, the NIGC should complete its economic analysis of the proposal by assessing the impact of the proposed definition and the technical standards. To the extent that the NIGC seeks to move forward with its alternative classification proposal, it needs to assess its economic impact as well.

4. The NIGC's Proposed Alternative Classification Standards Still Do Not Result in an Economically Viable Game, and are Unrelated to the Statute

The NIGC's alternative proposal for classification standards, like the earlier version, does not result in an economically viable game and impermissibly limits the use of electronic aids to the game of bingo. In addition, it would improperly and illegally grant States the unprecedented authority to take part in Class II gaming.

The alternative proposal is as arbitrary as the original. Rather than interpret the IGRA's statutory requirements for the game of bingo, the alternative proposal seeks to force a game design that does not exist, and has never existed.

Many of the objections we raised in our previous comments dated November 15, 2006, continue to apply to the new proposal as well. We do not repeat them all here. Significantly, the new proposal would illegally allow states a role in influencing Class II gaming. For the first time, the proposal would allow states to object to a Class II game certification. This grant of unprecedented authority to the States is contrary to the IGRA, which expressly granted States authority only over Class III gaming pursuant to a compact, reserving Class II for the tribes with oversight by the NIGC. It is also fundamentally at odds with tribal sovereignty. Such a provision is unacceptable to the Kickapoo Tribe, as we are sure it is for tribes nationwide, and should be withdrawn.

Further, the proposed alternative includes a three-year grandfather clause for tribes like ours that are currently engaged in the Class III Secretarial procedures process. We appreciate your acknowledgment of our situation and effort to account for it. It is difficult to determine whether three years will be enough time to get to the stage where we can offer Class III games as we have a right to do. While we hope three years is sufficient, unfortunately under the track record thus far, it seems more likely than not that three years may not be adequate. The State of Texas continues to challenge our efforts to get to Class III rather than to negotiate with us, and the Department of the Interior has yet to issue any decision on our application even though it was submitted in December 2003. With this, we propose that the grandfather provision in new Section 546.11 include only the events of obtaining procedures or obtaining a compact for determining how long the time period is for the grandfather clause to be in effect. This would allow us to have stability and viability in Class II operations until the time comes when we can finally exercise our rights to offer Class III gaming. Since our not offering Class III games is not by choice, a grandfather clause as mentioned above would be fair.

Finally, any alternative such as this one which makes such a material change to the proposed rule must be published as a new proposed rule with full opportunity for comment by the affected community.

CONCLUSION

Our Tribe is concerned that the NIGC will not consider all of the relevant conditions and economic impacts of its proposals. Our Tribe believes that the conclusions drawn in the Meister Report alone should halt this proposed rule-making. We believe there is no rationale basis to promulgate these regulations. For the reasons detailed above, the Kickapoo Traditional Tribe of Texas respectfully urges the Commission to withdraw the proposed Class II regulations. If the Commission intends to move forward with any of its proposals, it should first ensure that economic impact studies are conducted for each of the proposals (the facsimile definition, the technical standards and the proposed alternative for classification standards) so that tribes, manufacturers and NIGC are clear on what the effect of the proposals will be on Class II operations before they are implemented. We believe that this approach will avoid devastating economic impacts on tribes like ours and preserve the modest economic successes that our Tribe has achieved.

Sincerely,

Juan Garza, Jr.

Juan Garza, Jr., Chairman
Kickapoo Traditional Tribe of Texas

cc: Penny Coleman, Acting General Counsel
National Indian Gaming Commission